



Disclaimer: the material in this fact sheet is intended as a general guide only. You should not act on the basis of the information in this fact sheet without first getting legal advice about your own particular reason. The information is based on the laws in Victoria as of August 2020.

HOON DRIVING OFFENCES

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HOON DRIVING OFFENCES

'Hoon driving' is a term used to describe driving dangerously or causing nuisance on the road. Hoon driving laws brought in new police powers and tougher penalties for hoon driving offences – namely, powers to impound, immobilise or permanently confiscate vehicles.

Hoon driving offences include:

- speeding or dangerous driving at 45km/h or more over the limit;
- speeding at 145km/h or more in a 110km/h zone;
- drink driving with blood alcohol reading of 0.10 or higher;
- breaching an alcohol interlock condition;
- misusing or circumventing an alcohol interlock (eg by having someone else blow into the interlock device);
- driving under the influence of drugs;
- unlicensed driving;
- driving while suspended or disqualified;
- dangerous or negligent driving while pursued by police;
- 'improper use' of vehicle by intentionally making one or more wheels lose traction (eg doing skids, burn-outs, drifting, donuts, figure 8s, handbrake turns, reverse-flicks);
- dangerous driving, careless driving, fail to have proper control or causing your vehicle to make unnecessary smoke or noise;
- driving in a street race or speed trial, or organising one;
- intentionally or recklessly entering a level crossing when a train or tram approaching;
- disobeying a lawful direction from the police to stop driving;
- driving a vehicle with passengers sitting in an area not designed for passengers (eg in a boot or the tray of a ute);
- driving a vehicle with an animal or person sitting in the driver's lap;
- driving while a passenger is not wearing a seatbelt;
- riding a miniaturised motor cycle (monkey bike) on a road or road related area;
- driving with too many passengers in the vehicle;
- intentionally or recklessly exposing emergency services officers (eg police, ambulance, fire brigade officers), custodial officers or youth justice custodial workers to risk by driving; and
- intentionally or recklessly damaging an emergency services vehicle by driving (eg by driving into it).

Some offences are only classified as hoon driving offences if the offence is your second offence in the last 6 years.

These offences include:

- driving with an illicit drug in your system;
- drink driving with a BAC of less than 0.10; and
- drink driving with a BAC of more than zero but less than 0.10 when you are on a zero BAC licence (eg P-platers and taxi drivers).

Hoon driving offences are updated from time-to-time, so there might be extra offences than the ones listed here.

POLICE POWERS

If police have reason to believe you have committed a hoon driving offence they can:

- seize your vehicle by directing you to stop, hand over the keys, access the vehicle or remove parts in order to move your vehicle
- serve you with a notice to surrender your vehicle before a certain time
- enter and search an unlocked garage (even at a private home) if they have reason to believe your vehicle is there
- direct any person over 18 at a premises being searched to tell them where your vehicle is
- immobilise or impound your vehicle or direct a council or tow-truck operator to do so

Police Powers to Impound or Immobilise

Hoon driving laws give police powers to immobilise (eg wheel-clamp) your vehicle or impound your vehicle (take it away from you for a certain amount of time) if they believe that your vehicle has been involved in a hoon driving offence within the last 48 hours. Police can immobilise or impound your vehicle for 30 days.

If police do not act within 48 hours, they can still impound or immobilise a vehicle if they serve a surrender notice on the registered owner.

Getting your vehicle back from Police

If your vehicle was immobilised, the owner will have to collect a key at a specific police station to unlock the vehicle. Once it is unlocked, the lock and key will have to be returned to the police station within 24 hours.

If your vehicle is impounded it will be put in a securing storage area or garage. After the period of impoundment is over, you may have to pay the cost of storage to get it back (see 'Paying Costs' section below).

If police impound or immobilise your vehicle, they must release it if:

- the period set out in the impoundment or immobilisation notice or a court order (see below) has expired AND
- all related costs have been paid AND
- you can show proof of identity or, if someone collects the vehicle on your behalf, show their ID and authority from you

How else can I get my vehicle back?

If a police officer impounds or immobilises your vehicle, their decision must be reviewed by a senior police officer within 48 hours. The reviewing officer may choose to release your vehicle if he or she finds there were no reasonable grounds to impound or immobilise your vehicle or that it is reasonable or necessary to release your vehicle.

Otherwise, police will only release your vehicle if:

- they are satisfied your vehicle was stolen or hired by someone else at the time of the commission of the hoon driving offence
- you are found not guilty of the relevant hoon driving offence in court
- police do not file a relevant hoon driving charge or proceed with the charge within twelve months
- a court orders police to release your vehicle on 'exceptional hardship' grounds (see next)

Applying to Court for release of your vehicle

If police impound or immobilise your vehicle, you can apply to the Magistrates Court to get it back if you can prove you or another person would suffer 'exceptional hardship' if your vehicle is not released.

What is 'exceptional hardship'?

Exceptional hardship is not defined by hoon driving laws but it can include you or someone else needing the vehicle for family responsibilities, health reasons or for work.

If you were the driver and you need your vehicle for work, you need to prove your vehicle is essential to your work, not just convenient and you have no other transport options available.

You may not be able to argue exceptional hardship if you were the driver and your licence is suspended or disqualified. You should seek legal advice on whether you have grounds to argue exceptional hardship before you go to court – see 'Getting Legal Help' below.

COURT ORDERS TO IMPOUND OR IMMOBILISE

Police can apply for a court order to immobilise or impound your vehicle for 45 days or a longer period of up to 3 months if you have been found guilty of a hoon driving offence AND in the last six years you have been found guilty of another hoon driving offence.

Police must give you and any other affected person (eg person whose name the vehicle is registered under) written notice to attend court for a hearing of the application at least 28 days before the hearing date. The court must grant a police application for an impoundment order unless you can prove 'exceptional hardship' grounds (see above).

Forfeiture (Losing your vehicle)

Police can apply to the Magistrates Court for an order to take your vehicle away from you permanently (an order for forfeiture). If a forfeiture order is made, your vehicle will then be sold on to someone else or destroyed. You do not have any say over who your vehicle is sold to and the government keeps all the money from the sale. A court can make a forfeiture order if you have committed a hoon driving offence AND in the last 6 years you have committed 2 or more other hoon driving offences.

Forfeiture Order Hearings

Police must give you and any other affected person (eg person whose name the vehicle is registered under) written notice to attend court for a forfeiture hearing at least 28 days before the hearing date. At the forfeiture hearing, you will have a chance to explain why the vehicle should not be forfeited. The court may refuse to forfeit your vehicle if you can prove 'exceptional hardship' grounds (see above).

PAYING COSTS

Before releasing your vehicle, police may demand you pay costs for the impoundment or immobilisation of your vehicle unless:

- you are found not guilty of the relevant hoon driving offence
- police do not file a hoon driving charge or do not proceed with a charge within twelve months

Police must refund any costs you have already paid if you are later found not guilty of a hoon driving offence or if police do not file or proceed with a hoon driving charge within twelve months.

NOT THE DRIVER?

Even if you were not the driver, your vehicle may be immobilised, impounded or even forfeited if someone else is caught hoon driving in that vehicle. If you are the registered operator of the vehicle, police should notify you of any impoundment, immobilisation or forfeiture order application relating to your vehicle.

WHAT IF MY VEHICLE WAS STOLEN?

Police must release your vehicle as soon as possible if they are satisfied it was stolen at the time of the hoon driving offence. Police may ask you to make a report or a sworn statement about the stolen vehicle if you have not made one already.

WHAT IF I DIDN'T KNOW OR GIVE PERMISSION?

If you can prove to the court you did not know or consent to someone else hoon-driving in your vehicle, the court must not make an impoundment, immobilisation or forfeiture order.

IS THERE ANY OTHER WAY I CAN GET MY VEHICLE BACK?

The court may agree to release your vehicle or decide not to make a forfeiture order if you can prove you or another person would suffer 'exceptional hardship' (see above).

CAN THE COURT PLACE ANY OTHER RESTRICTIONS ON MY VEHICLE IF I WASN'T THE DRIVER?

If you attend a forfeiture hearing as the registered operator, the court may ask that you give an undertaking (a promise to the court) that you will not allow the driver to use your vehicle for a certain amount of time. If you break that promise, the court may then order that your vehicle be immobilised, impounded or forfeited.

GETTING LEGAL HELP

Youthlaw

If you are under 25, you can get free and confidential legal advice and information.

Phone: (03) 9113 9500 (9am-5pm, Mon-Fri)

Website: <http://youthlaw.asn.au/>

Victoria Legal Aid

For legal information, referrals or appointments:

Phone: 1300 792 387

Website: <http://www.legalaid.vic.gov.au/> - see particularly <https://www.legalaid.vic.gov.au/find-legal-answers/traffic-offences/hoon-driving-and-impoundment>

Visit our website: www.youthlaw.asn.au

Chat to us: 03 9113 9500

Email your questions: legal@youthlaw.asn.au

YOUTHLAW

Young Peoples Legal Rights Centre

Inc No A0041616E
ABN 12 794 935 230